

USDS SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 2/4/08

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
UNITED STATES OF AMERICA,

-v.-

JAMES G. MARQUEZ,

Defendant.
-----x

:

:

:

:

FINAL ORDER OF FORFEITURE

06 Cr. 1138 (CM)

WHEREAS, on December 14, 2006, the defendant JAMES G. MARQUEZ (the "defendant") was charged in Information 06 Cr. 1138 (CLB) (the "Information") with conspiracy to commit investment adviser fraud and mail fraud, in violation of 18 U.S.C. § 371;

WHEREAS, the Information included a forfeiture allegation charging that the defendant shall forfeit to the United States, pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461, all property, real and personal, that constitutes or is derived from proceeds traceable to the commission of the offense set forth in Count One, to wit, all right, title and interest of the defendant in the following, and all property traceable thereto:

- a. 20,000 shares of common stock in KFx Inc., stock certificate No. 7476;
- b. 20,000 shares of common stock in KFx Inc., stock certificate No. 7477;
- c. 20,000 shares of common stock in KFx Inc., stock certificate No. 7478;
- d. 20,000 shares of common stock in KFx Inc., stock certificate No. 7479;

- e. 20,000 shares of common stock in KFx Inc., stock certificate No. 7480;
- f. 106,454 shares of common stock in HydroGen, stock certificate No. 640;
- g. 70,026 shares of common stock in HydroGen, stock certificate No. 554;
- h. 550,000 warrants to purchase common stock of ThermoEnergy Corp, identification no. W05-CW02, expiring on 07/15/08;
- i. 341,211 warrants to purchase common stock of ThermoEnergy Corp, identification no. W05-PA3, expiring on 07/15/08;
- j. 2004.3743 shares of series B-2 convertible participating preferred stock of Integrated Fuel Cell Technology; and,
- k. all proceeds of the sale of the property at 1621 Gaspar Drive South, Boca Grande Isles, PB 29, PG6, Lot #4, Boca Grande, Florida 33921.

WHEREAS, on December 14, 2006, the defendant pleaded guilty pursuant to a plea agreement in which the defendant admitted to the forfeiture allegations in the Information and agreed to forfeit to the United States, pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c), all right, title and interest of the defendant in the following property, on the ground that it constitutes proceeds obtained as a result of the offense charged in Count One, and property traceable to such property:

- a. 20,000 shares of common stock in KFx Inc., stock certificate No. 7476;
- b. 20,000 shares of common stock in KFx Inc., stock certificate No. 7477;

- c. 20,000 shares of common stock in KFx Inc., stock certificate No. 7478;
- d. 20,000 shares of common stock in KFx Inc., stock certificate No. 7479;
- e. 20,000 shares of common stock in KFx Inc., stock certificate No. 7480;
- f. 106,454 shares of common stock in HydroGen, stock certificate No. 640;
- g. 70,026 shares of common stock in HydroGen, stock certificate No. 554;
- h. 550,000 warrants to purchase common stock of ThermoEnergy Corp, identification no. W05-CW02, expiring on 07/15/08;
- i. 341,211 warrants to purchase common stock of ThermoEnergy Corp, identification no. W05-PA3, expiring on 07/15/08;
- j. 2004.3743 shares of series B-2 convertible participating preferred stock of Integrated Fuel Cell Technology; and,
- k. all proceeds of the sale of the property at 1621 Gaspar Drive South, Boca Grande Isles, PB 29, PG6, Lot #4, Boca Grande, Florida 33921 ("the Boca Grande Property").

(collectively, the "Specific Property");

WHEREAS, on January 29, 2007 the Court entered a Preliminary Order of Forfeiture / Final Order of Forfeiture as to Defendant Marquez's interest in property forfeiting the defendant's right, title and interest in the Specific Property; A copy of the Preliminary Order of Forfeiture is attached hereto as Exhibit A and is fully incorporated by reference herein; and

WHEREAS, on April 3, 2007, Busey Bank, N.A., f/k/a Busey Bank of Florida (hereinafter "Busey Bank"), filed a Petition for Adjudication of Interest in the Boca Grande property, as holder of a mortgage interest in the amount of \$1,150,000.00;

WHEREAS, on September 11, 2007, the United States and Busey Bank, entered into a Stipulation and Order, whereby the United States agreed to allow Busey Bank to commence and prosecute an action in the State of Florida seeking a judgment foreclosing the defendant's interest in the Boca Grande Property. The United States would then take any necessary steps to forfeit the proceeds obtained after the foreclosure;

WHEREAS, on January 22, 2008 the defendant was sentenced and, as part of his sentence, was sentenced to forfeiture of the Specific Property; and

WHEREAS, the provisions of 21 U.S.C. § 853(n)(1), require publication of notice of forfeiture and of the Government's intent to dispose of the Specific Property before the United States can have clear title to the Specific Property; and

WHEREAS, on March 3, 2007, notice of the forfeiture action was sent by Certified Mail to Stanley A. Twardy, Jr., Esq., at Day, Berry & Howard, L.L.P., One Canterbury Green, Stamford, CT 06901, as counsel for the defendant, and to L.M. Mickey Jones, III, Busey Bank Florida, 7980 Summerlin Lakes Dr., Fort Myers, FL 33907.

WHEREAS, on June 5, 2007, notice of the forfeiture action was also sent by Certified Mail to Cynthia Feigin, Esq., as counsel for Mariella Marquez, at Demey and Feigin, L.L.P., 9 East 40th Street, 13th Floor, New York, NY 10006; Copies of the notices and certified mail receipts are attached hereto as Exhibit B;

WHEREAS, notice of the forfeiture action was duly published in the New York Law Journal, once in each of three successive weeks beginning on March 21, 2007. Proof of such publications were filed with the clerk of the Court on August 13, 2007. A copy of the proof of publication is attached hereto as Exhibit C;

WHEREAS, pursuant to 21 U.S.C. § 853 (n)(7), the United States shall have clear title to any forfeited property if no petitions for a hearing to contest the forfeiture have been filed within 30 days of final publication of notice of the forfeiture as set forth in 21 U.S.C. § 853 (n)(2); and

WHEREAS, 30 days have expired since final publication of notice and no petitions to contest the forfeiture have been filed;

NOW, THEREFORE, on the application of Michael J. Garcia, United States Attorney for the Southern District of New York, by Sharon Cohen Levin, Assistant United States Attorney, IT IS ORDERED, ADJUDGED AND DECREED THAT:

1. All right, title and interest in and to the following property is hereby forfeited and vested in the United States:

- a. 20,000 shares of common stock in KFx Inc., stock certificate No. 7476;
- b. 20,000 shares of common stock in KFx Inc., stock certificate No. 7477;
- c. 20,000 shares of common stock in KFx Inc., stock certificate No. 7478;
- d. 20,000 shares of common stock in KFx Inc., stock certificate No. 7479;
- e. 20,000 shares of common stock in KFx Inc., stock certificate No. 7480;
- f. 106,454 shares of common stock in HydroGen, stock certificate No. 640;
- g. 70,026 shares of common stock in HydroGen, stock certificate No. 554;
- h. 550,000 warrants to purchase common stock of ThermoEnergy Corp, identification no. W05-CW02, expiring on 07/15/08;
- i. 341,211 warrants to purchase common stock of ThermoEnergy Corp, identification no. W05-PA3, expiring on 07/15/08;
- j. 2004.3743 shares of series B-2 convertible participating preferred stock of Integrated Fuel Cell Technology; and,
- k. any proceeds obtained from the foreclosure sale of the property at 1621 Gaspar Drive South, Boca Grande Isles, PB 29, PG6, Lot #4, Boca Grande, Florida 33921, (collectively the "Defendant Property").

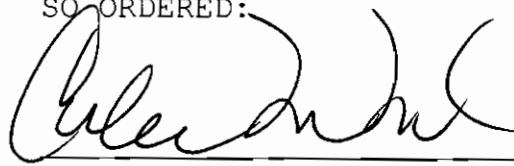
2. The United States Marshals Service shall dispose of the Defendant Property according to law.

3. The Clerk of the Court shall forward four certified copies of this order to Assistant U.S. Attorney Sharon Cohen Levin, One St. Andrews Plaza, New York, New York, 10007.

Dated: New York, New York
~~January~~ __, 2008

2/1/08

SO ORDERED:

A handwritten signature in black ink, appearing to read 'Colleen McMahon', written over a horizontal line.

HONORABLE COLLEEN McMAHON
UNITED STATES DISTRICT JUDGE